FINDING THE MAN IN THE COURT: A CRITICAL LEGAL APPROACH TO GOOD CONDUCT ABATEMENT

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Abstract

The deterioration of women's rights and an acute increase in gender-based violence have become evident in Turkey. The sudden withdrawal from Istanbul Convention on Violence Against Women by the AKP government has further revealed the government's insistence on abstaining from effectively combatting gender-based violence. One of the primary instruments for state-induced gendered violence as pointed out by feminist circles, is the good conduct abatement. Good conduct abatement is a legal term that refers to the reduction of sentences in cases where the offender demonstrates good behavior. In the Turkish context, this practice has been said to be systematically used in cases of femicide in favor of the offender. Thus, feminist circles have long criticized the good conduct abatement for sustaining the male privilege in front of the law. Unlike previous studies which analyze the combat with gender-based violence through policy perspectives, this study aims to extend the literature by examining the constitutional obstacles for addressing gender-based violence from a feminist legal theoretical framework. Namely, to what extent the good conduct abatement may privilege offenders in cases of femicide? I defend good conduct abatement is necessary as a modern legal right, however, through such inquiry we may estimate its effects on sustaining gender-based violence.

Terms: good conduct abatement, gender-based violence, unjust provocation, penal code, critical legal studies, feminist legal theory, Turkey

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Dedication

To all the women who have died, as well as to all women who resist and keep living in defiance…

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Chapter 1: Introduction

Violence against women (hereafter VAW) and femicide have been major problems in Turkey and the gravity of the problem has increased over the last years. The platform We Will Stop Femicides (2025) reports that almost 400 women were murdered by men and 259 women were found suspiciously dead in the past year of 2024. Despite the alarming statistics, efforts made in combatting gender-based violence remain unsatisfactory whereas the problem is consistently excluded from the political sphere. Namely, the Justice and Development Party (hereafter AKP) government and its ministry branches have been criticized to undertake a passive role as policy actors in combatting VAW. This was most prominently displayed in 2021, when the Turkish government abruptly withdrew from the Istanbul Convention - a legally binding agreement that sets standards for protecting women from all types of violence (Aksoy 2021). Withdrawal from the Istanbul Convention is only one of the steps the AKP government had taken in the opposite direction. In response, feminist organizations took over this urgent need for an organizational movement in combatting VAW. Today, the feminist organizations are at the forefront as institutions that serve the tools in combatting VAW and fill in the shoes that could be filled through contributions of policy actions.

This thesis examines one specific legal mechanism that is “good conduct abatement” in relation to the larger legal operation and as a window into how the Turkish legal system contributes to, rather than prevents, gender-based violence. The term good conduct abatement (*iyi hal indirimi*) is also known as good time, time off for good behavior, discretionary mitigation, or at the most basic level, a sentence reduction in a criminal punishment. The term refers to the discretionary reduction of a perpetrator’s sentence based on their behavior,

reasoning of their act, or courtroom appearance. In Turkish criminal courts, this mechanism is governed by Article 62 of the 5237 numbered Turkish Penal Code (TPC) which allows for a mitigation in cases where the perpetrator demonstrates remorse or positive behavior during the trial. While it may seem reasonable in a justice system that allows for a potential to change in favor of the offender, feminist legal scholars and activists have historically argued that good conduct abatement in this Turkish context works in the favor of the perpetrator, especially in cases of VAW. Particularly, feminists have long underlined the practice of sentence reduction being applied according to arbitrary reasons – such as wearing a suit in court, crying, having no prior record. The widely used Turkish feminist slogan "Erkek adalet değil, gerçek adalet" ("Not male justice, but real justice") encapsulates the critique of the feminist groups that the legal system protects male dominance under the disguise of neutrality. This slogan alone underlines how the justice system is perceived as biased according to gender, and how legal decisions are contested by the feminists. The purpose of this thesis is to analyze in matters of gender-based violence how the legal structure and courtroom practices reflect societal norms that may be patriarchal. This reflection may work in the other way around, as this thesis also attemps to understand how these legal practices possibly shape in return what the general public adopts as a norm.

Throughout the years, the problem of VAW has not been sufficiently addressed in the political arena. Violence is deemed as a private matter, and it is reduced to the individual level rather than being appropriated as systematic gendered violence. In this respect, this thesis aims to tackle VAW as a political and constitutional problem based on criminal justice responses to gender-based violence. The aim of this thesis is threefold: (1) to unpack gender-based violence in the context of Turkey and address it as a political problem, (2) challenge the flexibility of legal

operation in relation to the political regime, and (3) address the issue of impunity of femicide perpetrators through reduced sentences due to "good conduct". The thesis is positioned at the meeting point of politics of gender and law. Differently from other studies in the literature, I attempt to trace the link of the good conduct abatement (and VAW at large) to the AKP government. The knowledge has been limited due to many reasons such as its contemporariness, lack of VAW data, and the difference in analyses related to Turkey's regime type and gender politics. I position VAW on a more critical ground that pinpoints the gender politics that prevail in all political and social institutions through a feminist epistemology and critical legal studies framework. Particularly, the way in which gender-based violence is addressed through legal institutions in Turkey is problematic. Therefore, the motivation of this research lies in the attempt to understand the ways of standard legal operation and question the ways it may be open for manipulation to serve certain interests and certain groups. I problematize the claim of objecitivity and neutrality to all parties in a legal system. Such claim may result in a concealed form of difference in treatment to legal subjects. Such concealed form, therefore, may imply a patriarchal pattern and whether or not this pattern exists is what I investigate in this research.

This study is situated at the intersection of feminist legal theory and critical legal studies. Both lines of studies reject the supposed objectivity and neutrality of law, and argue that legal systems reflect the dominant social and political interests. In feminist legal theory, the legal subject is historically male (MacKinnon 1987; 2006), and legal systems tend to perpetuate gendered categories as well as share them (Smart 1989). Drawing on this theoretical foundation, Chapter 2 addresses good conduct abatement as a legal practise that serves as a contestable subject embedded in the legal system.

To examine this practice in depth, I adopt a critical qualitative methodology. This

includes a review of legal texts, media reports on publicized femicide cases, court decisions, and semi-structured interviews with feminists who follow femicide court cases as well as informal interviews with legal professionals in order to understand the professional language of legal texts. Given the lack of official data on gendered violence and femicide, as well as, the limitation of Turkish public court orders, this method allows for the collection of insight that is otherwise unrecorded in legal documents. My own positionality as a woman and a feminist researcher with connection to activist networks is also an asset for accessing this knowledge and interpreting it.

The backdrop of this research is the AKP's two-decade rule in Turkey. Chapter 3 addresses the standard legal operation in Turkish context and the political regime. The party's position has wavered throughout the years with regards to women's rights legislation. In 2005, the establishment of a parliamentary commission for honor killings and domestic violence, as well as being the first country to sign the Istanbul Convention in 2011, are acts that imply a constructive effect (Gozdasoglu Kucukalioglu 2018). However, the period after 2011 implies a strengthening of the traditional family discourse and deploying of moral or religious intentions (Gunes & Ezikoglu 2022). Statements by party leaders, such as President Erdoğan's claim that "women and men are not equal by nature" (Kaos GL 2014) reveal the problematical underpinnings of policy and legal shifts. In this changing political climate, legal tools function as state-sanctioned mechanisms and work in a way that isolates violence to individual matters rather than a societal problem. The judgement of courts place a strong burden on the 'offended' rather than the 'offender', which will be demonstrated through court cases.

This study does not argue for an abolition of good conduct abatement as a law; rather, it aims to inspect its application in Turkey. Chapter 4 explores good conduct abatement as a practise in written form and in practice. In principle, every individual may make mistakes and

criminal law should allow space for improvement for such individuals. This concept of many liberal legal traditions, however, in practice may fall short for opening up space for interpretation based on bias, moral judgement or underlying gender norms, and in return end up into entering as formal legal reasoning. By tracing how this space of interpretation is navigated in Turkish legal system, this thesis seeks to understand the deeper logic of the legal operation.

Ultimately, this research aims to contribute to feminist legal scholarship by offering a country-specific case study that highlights how law itself—through its concepts, institutions, and procedures—can function as a tool in sustaining gender-based violence rather than disincentiving it. Sentence reduction in criminal punishment gives a level of freedom in court which works to individualize a punishment. Every offender is not the same nor the offense. The primary use of the provision of good conduct abatement in the larger scope is to offer a larger interpretation of the committed crime and give the punishment fittingly to the offender. However, in this context, this research investigates whether or not this interpretation works in a institutionalized bias towards the offender, in a “male logic”. By focusing on the courtrooms, where abstract legal principles are translated into real outcomes for real people, this study joins feminist efforts to find the man in the court—not just as a defendant, but as a subject constructed, protected, and empowered by law.

Chapter 2: Theoretical Framework

In this section for connecting gender and law, critical legal studies and feminist legal theory will be addressed in terms of (1) objectivity and (2) treatment of legal subjects. The main body of theoretical literature investigates the core concerns of feminism in relation to law and reflects on the persistent nature of the legal methods to change.

Theories of critical legal studies (hereafter CLS) approach legal operation as a normative understanding and practice. Constitutional lawmaking, interpretation and enforcement cannot be fundamentally distinguished from societal norms and the society at stake. However, the processes of law seem to reflect stable and neutral ground to where citizens are bound. CLS argue that these processes can be traced to the role of law in describing and prescribing societal change. In addressing gender-based violence, theories of CLS allow us to confront the legal ways of understanding violence and exposes a large scope of the problem. Another sub-section will address this (3) critical link of the legal system with gender in relation to feminist legal theory, and define at large what makes a "legal theory" feminist.

Critical legal studies hold the promise of making a difference in the practice of norms made and enforced by the government. CLS argues the law is not built upon structurally unshakeable grounds and should not be regarded as that; rather a problematization of what is legitimate, and the processes of that legitimation should be discussed. By effectively identifying the problems within constitutional law-making and enforcement, the practice of norms is to be adapted to our contemporary understanding of the constitution. Scholars underline the effectiveness of law processes in its elasticity and generality (Freeman 1980; Hay 1977; Lacey 2002). Both characteristics stem from the critical perspective that approaches legal acts as

byproducts of societal order produced by individuals.

2.1 Claim of objectivity and neutrality

The claim for "objectivity" is critically reviewed in critical legal studies. Claiming objectivity leads to an assumption of unquestionability which obscures the role of law in operating particular interests of some political groupings (Tushnet 1991). Therefore, the claim of "mirroring" the society itself is problematical in lawmaking, law itself is a production of a given collective tradition and stands in a fundamental place in the application of state power (Unger 1986). Unger in arguing for objectivism in legal claims remarks "they display, though always imperfectly, an intelligible moral order" (2). In this sense, making a moral order is one of the roles of the state, and legislation may prove to be a tool in achieving that. MacKinnon (1987: 26) notes "rape is not illegal, it is regulated", it is important to underline that what is legitimate constitutes a reflection of interests, and those interests are not durable or stable. Rather it is a dynamic process that reshapes according to particular interests that in time appear as common. Reflecting on the legal system as a combination of interest-based institutions that are not structurally separate from other state institutions, proves to be the crux of critical legal theory.

Law functions within the institutional and social relationships which the family and intimate relationships are situated (Freeman 1980; Merry 2005). One of the most common legal interpretations related to gender-based violence is the individualization of the problem. Violent acts are often treated as isolated incidents rooted in private dynamics rather than expressions of broader structural inequalities. This is a structural problem within the law, as the law cannot act in a different manner. To some extent, the legal system has to engage in these private affairs that are based on social and structural factors. However, in practice, courtrooms cannot completely

grasp the depth of the relationship between the 'offended' and the 'offender' nor it is burdened to grasp such relationship. Still, a courtroom that claims neutrality to both sides cannot be effective in such promise if the situation is not investigated in depth. When the law claims to apply neutral and objective standards to every citizen, gender-based violence cases risk reinforcing existing inequalities if it fails to account for the gendered context in which violence takes place. MacKinnon (2006) emphasizes that legal equality debate is accompanied with sameness and difference debate in the traditional approach. Sameness and difference debate refers to the idea of equal treatment not meaning 'same' treatment. In order to establish equality; individuals, representative groups, categories are treated with an emphasis on their differences. To illustrate this debate, Young (1989) argues that the concept of citizenship often assumes a universal sameness that transcends social and group differences. This notion of equality, defined as uniform treatment under the law, obscures the particular experiences and structural disadvantages faced by marginalized groups. Equality conceived as sameness gives birth to problems and ideals with universality. Young underlines that a strict adherence to a same treatment under the guise of "equality" may perpetuate oppression. Treatment of individuals with different subjectivities and relationships will be elaborated in the next subchapter. Treating differents 'different' requires a critical awareness on the social realm. The fact that women are generally victimized and men generally penetrate, however, is not a particular problem of law. Law as an institutional production of the state and a protectional mechanism on its citizens, cannot work to solve the problem of gender violence. It can only investigate the individual situations in which violence has occurred and interpret within the social awareness that gender-based violence is in an acute increase.

Carol Smart in "Feminism and Power of Law" (1989) develops the cornerstone of

feminist legal theory and argues the reasons why law is resistant to feminist knowledge. This resistance stems from the law as a construction of knowledge in itself; the Law is not one distinguished entity that claims the existence of truth, instead Smart underlines, it is the "ideal of law" we attribute status to. Hence this ideal of law denies possibility of other kinds of knowledge, such as feminist knowledge and resistance. Smart notes "Law claims to have the method to establish the truth of events" (10), this process establishes a professional method, testing, specialized language and system in the name of jurisprudence. This production of its own professional logic conduces and makes necessary the claim for objectivity.

In categorizing principal theories of feminist legal theory, scholars refer to various subbranches; equal treatment theory, cultural feminism, dominance theory, critical race feminism, ecofeminism and many more (Levit & Verchick 2016). In particular, dominance theory proves to be the most in line with this research. Dominance theory exposes that law among other institutions as complicit in constructing women as inferior. This line of thinking are aligned with scholars like MacKinnon and Smart, and we can put them under the same theoretical category. This category argues that instead of struggling towards an equality before the law, its structure that is based on power and interests should be exposed to strive for a real change. "Many laws are not neutral nor objective as they purport to be, but are actually ways that traditional power relationships are maintained" (27); this concealment under the neutrality and objectivity works in opposition with the feminist understanding of combatting with violence in the first place.

2.2 Treatment as legal subjects

Liberal democracies and their justice systems are built on the principle of equality before

the law - a notion that promises equal treatment of all individuals as legal subjects. However, feminist legal scholars have long argued that this idealized universality often conceals structural inequalities and reinscribes dominant norms. While equality is celebrated as the democratic cornerstone of legal systems, its actual application is far more complex and often exclusionary.

MacKinnon (2006) points out that equality as a concept in law is rarely interrogated. Legal equality campaigns for women have aimed to achieve equal treatment by claiming sameness to men while at times defending positive differentiation. These approaches accept the terms of legal recognition without challenging the masculine standard that underpins them. The law assumes a neutral subject, an ‘individual’, but that subject is historically and structurally male. Thus, women can only claim equality by proving that they are the same as this default abstract individual, or by qualifying as "exceptions" who require special treatment. This creates an important paradox: if difference is acknowledged, it risks being institutionalized in ways that essentialize or marginalize; if difference is denied in the name of equality, the dominant standard is reinforced. The safest legal strategy, then, often becomes the formalization of a unified, standardized model of legal subjecthood. However, this model leaves little room for structural critique or social complexity. In practice, the courtroom remains a space of interpretation where discretion, moral judgment, and institutional norms play a significant role in shaping outcomes. Most feminists agree that oppressed groups may achieve political gains and stand against the “pressuposed” legal subject through grassroot movements. Schneider (1986) argues that rights are not static, rights are achieved in emerging responses to political issues. It is important to note the historicity of women’s movements achievements, and support Schneider’s claims as she emphasizes the interrelationship between legal subjecthood and political struggles.

Merry (2005) in attempting to understand women who turn to law in crises of violence,

notes that instead of citing a single gender system and a single legal order, one should view the complexities in differences of groups. She emphasizes the 'plural' nature of both law and culture, as there exists more than one singular law or culture, and also neither of them exist indifferent to each other. Her main line of argument is that legal reforms to combat VAW must engage with local narratives and cultural arrangements in a given society. Merry notes that an approach to culture that views its dynamic nature is essential and potentially transformative. Her view aligns with feminist critiques of formal legal equality on the grounds that law's effectiveness is not solely dependent on formal provisions. The importance also lies in how these provisions are interpreted and practiced within specific contexts. In the Turkish context, practices like good conduct abatement highlight this tension between formal equality and interpretive discretion. Although the law claims to treat all defendants equally, courtroom decisions often reflect gendered assumptions and behaviors. These assumptions ultimately shape how women and men are positioned as legal subjects.

2.3 Critical link of legal system with gender

In light of prior discussions, law appears to construct a certain degree of impersonality and universality. In opposition with family as an institution where family relations are marked by individual intimacies and particularities, the legal operation appears to be at the opposide polar (Reichold 2010). As opposed to intrapersonal relations within family, law seeks to constitute and regulate intra-citizen relations upholding all individuals to equal principles and laws. The notion of legality and justice prove to be more rule-based also in gender issues. There appears a sharp structure for the ability of legal institutions to interpret individual actions and consequences. For example as it will be discussed further, Turkish Penal Code draws a loose distinction between

"spontaneous" versus "planned" action. An action that is planned signals a prior prepration for the action which brings about a heavier punishment. However, this distinction may come about abstract in real life. Also, this action may or may not measured according to gendered preassumptions and categories that women are oppressed in. As it will be demonstrated in the case of Ayşe Yılbaş, the higher Court may rule out the local court's decision by asserting that the woman provoked the man into killing and he should be given a reduction. As also it will be demonstrated in almost all of the case studies, such provocation cases are based on a gendered preassumption – if a woman wants to divorce, she ends up provoking and such. In this understanding, everything that a woman does can end up being interpreted as a provocation, and all actions can be deemed as "spontaneous". Therefore, it is necessary for legal institutions to consider the gendered backdrop of punishable acts.

Every court case necessitates contextualization and an understanding of what happened, still, the relationship between family and law displays a significant individuzalition of the problem (Freeman 1980). As domestic violence occurs within the private sphere of the family, the most common interpretation for domestic violence is to attribute it to sick or mad husbands. As seen in again Ayşe Yılbaş case, the defense attempts to argue that the defendant was mad and to get a doctor's report. In another case, Nazlı Meral's murder, the case will demonstrate the failure of a husband who attempted to act mentally unfit in order to get mitigation. While there may be cases where the perpetrator is mad in truth, the empirical cases imply that these men are motivated by the impunity that is publicized to VAW offenders. One must remember the tension between the legal operation, culture and gender. As Merry (2005) argues, the cultural complexities imply a contextual implication in the court rooms. Although the law has changed and legal provisional changes are slow but steady, honor killings as well as traditional gender

norms still coexist in Turkey (Kogacioglu 2004). Therefore, it is important to note VAW as a structural problem that law partakes in constituting. Only through realizing its embeddedness, Freeman argues, we may then observe how legal institutions work in the support for this social order.

2.3.1 Feminist legal theory

Feminist legal theory as a branch of critical legal studies aims to address the situations of patriarchal oppression and violence, domestically and globally, by pointing to the role of law in enforcing and perpetuating the patriarchal order. By questioning the role of law in VAW, we can unmask the concealed substantive ways in which gendered implications prevail. Feminist legal theory argues to shed light on these gendered implications especially in cases where gender does not appear as a primary determining factor. Rather, the legal subjects may appear to be judged according to their gendered bodies and the particular case may be contextualized accordingly. An example is laws concerning marriage and family; feminist literature refers to the problem of women as reduced to their roles as wives and mothers. There has been a shift in focus due to its normative ground, and the legal system pays attention particularly to not discriminate legal subjects based on their gendered roles within the family institution. Within contemporary perspectives, feminist discussions have served theories of justice to show similar discrepancies and injustices between gendered roles that are rooted beyond the scope of legal system (Reichold 2010).

Feminist legal theory has principal categories as they were mentioned before, which are namely equal treatment theory, cultural feminism, dominance theory, critical race feminism, and postmodern feminism (Levit & Verchick 2016: 20). For the theoretical framework of this project, the adoption of multiple categories is necessary as these categories are not exclusionary

of each other, rather they mark and emerged from feminist debates in the last century. Bowman & Schneider (1998: 251) note that feminist legal theory has evolved into 4 main schools in time: formal equality theory, cultural feminism, dominance theory, and post-modern theory. In terms of this research, dominance theory allows for the greatest space for exploration of our topic. Formal equality theory and cultural feminism make the emphasis on the debate of equality based on sameness-difference, where the women are positioned against the male norm. Dominance theory, on the other hand, identifies law as complicit in taking the male standard as the primary benchmark. The issue is not with a particular set of laws nor will it go away in amendments (Lacey 1998: 2). Problematization of the very structure is essential that is hierarchically gendered. In general, Bowman & Schneider argue that practice and theory shape and reshape each other. Feminist legal theory was born in order to grip the complexity in women's legal problems and has flowed in different branches, as it will continue to shape and reshape our understanding of law.

The framework through CLS and feminist legal theory offers a great space to explore in assessing the operation of legal order in politics and society for the case of VAW. Illuminated by the constructions of legal subjects as well as neutral and objective claim of the legal system, the practice of law can be further problematized. First, we will unpack the standard legal operation in Turkey and the policy actions in terms of combatting against VAW in a historical lense. In order to understand the political regime, we must first ground the institutional steps that were taken in time. Then, the practice of "good conduct abatement" can be analyzed with regards to these political realities.

Chapter 3: The Field of Law in Turkey

In Turkey, law and power have always been on the political agenda. After the Justice and Development (hereafter AKP) party come into power, the meaning and the impact of legal acts have transformed. This chapter depicts the country's background of the country-specific case at hand with a focus on law and violence against women. Not only the policy acts in combatting VAW have changed over the years, also the institutional meaning and workings of the law has changed drastically. Therefore, this chapter is necessary to have a grasp on the whole picture.

Historically the importance of VAW was not recognized until very late as a political matter, not only in Turkey but around the world. By the efforts of the feminist movements in the 1980s and 1990s, the quintessential slogan "personal is political" became widespread. In Turkey, after the military coup of 1980, the post-coup regime joined in the efforts of the second-wave feminists into paying attention to women's concerns into the political agenda. The initiative for institutional change was taken by few feminists in the parliament as well as governmental bodies. Strategical attemps were made in time step by step; an example is against the Civil Law clause that remarked 'men as head of the family' and although it was much later, this law was changed due to the efforts of the feminists filing divorce all at once (Altan Arslan et al. 2022: 866). The main public movement arose when in 1985, a judge made rejected a divorce request with scandalous remarks. The woman was pregnant, and the judge gave this pregnancy as a reason for rejection of the divorce and exclaimed "never leave a woman without a baby in her womb or the threat of a stick on her back" (Baytok 2024). After this buffling ruling, this court case incited a huge outrage by the general public and the "No to Violence" Campaign spread resulting in protests all around the country. Turkey ratified the United Nations' Convention on

the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1985. CEDAW is historically a clear benchmark in elimination of any discrimination based on gender and efforts against VAW. It notes changes in law and policy alone are not sufficient to address the core of inequality between men and women (CEDAW 1979). The convention also holds states responsible into addressing and combatting VAW and gender inequality. Therefore it is a big step for Turkey to ratify this convention. "Purple Shelter" which is the main women's shelter foundation providing support for women dealing with VAW, was established in 1990. The term "domestic violence" was defined in a legal context for the first time in Law 4320 in 1998 (Altan Arslan et al. 2022: 870). Before the AKP government took the stage in 2002, the struggle for feminist policymaking and implementation was already existing.

In terms of time frame of the study, I limit my analysis of the practice 'good conduct abatement' to the AKP government period from November 2002 to today. This period is particularly important as through this research, we can identify and address the effect of the AKP government on this phenomenon. As the lack of official and public data on VAW still persists, it would also appear credibly difficult to take the period before 2002 into account. Since 2002, the AKP government has been blamed for not taking effective measures against VAW (Gunes Ayata & Dogangun 2017). On the contrary, through ambiguousness in addressing the problem of VAW, and reducing it to a moral problem in the private sphere where the state cannot meddle in, the AKP government is partially responsible for its perpetuation. These dynamics become apparent through many problematical discourses in Turkey such as speeches of state representatives, the police, the helpline, and judicial processes. For instance, Özlem Zengin who is an AKP deputy has startingly stated "femicides are difficult to confirm" (Cumhuriyet 2020), which is a remark that exposes the ambigous take on the responsibility against VAW on the

state's part. It is a private matter that happens in the family sphere which makes it difficult to confirm, and AKP's gender politics illustrate that the family is constantly and symbolically upheld. I aim to pinpoint turns and periods within the long regime period of AKP in dealing with VAW and possibly categorize the periods associated with different political behavior.

The path to legislative and social change began when the Turkish government acknowledged VAW as a serious social problem, however, the Turkish government would not take on the essential responsibility in promoting the laws. Experts suggest even after years since passing the law, it would lack implementation, and strategically feminist activists would have to step up to take on the responsibility to lobby and pressure for another legal change (Altan Arslan et al. 2022). The impact of the feminist movement in Turkey has ever been instrumental to changes in legislation and policy in line of women's rights. In the least, the pressure of the movement would result in an acceleration of the institutionally formal and slow speed of lawmaking.

By putting policy and legal actions carried out by the AKP government in a timeline, we can grasp what has happened over the years. Scholars mark a breaking point in 2011 for Turkey's politics of gender and it will be apparent as to why, once actions are put into a timeline (Kandiyoti 2016; Gunes Ayata & Dogangun 2017; Gunes & Ezikoglu 2022). Also, the party politics of AKP do not have a linear progression, however, the period of EU candidacy process appears as the most influential factor on party dynamics during that time. In December 1999, Turkey was granted candidate status for EU membership, which obligated the country to harmonize its legal, political, and economic systems with European Union standards. In November 2001, the new Turkish Civil Code passed which establishes gender equality in terms of rights over family (Kandiyoti 2011). In 2002, AKP came into power with a clear programme

to take a step towards EU membership and progressed as part of the Europeanization process (Aybars et al. 2019). In order to ensure EU membership, a country has to make visible changes in legislature and practice as such. In 2004, new Turkish Penal Code was accepted and can be seen as progressive in terms of combatting against VAW. The new Code criminalized marital rape and rape came to be considered as a crime against "sexual inviolability". The most important development in this period in terms of this research was the amendments on the general mitigation article. Before, this article could grant sentence reductions up to seven-eights (Gunes & Ezikoglu 2022). Today, as it will be explored in depth, mitigation article grants a reduction up to one-sixth of the punishment. Honour killings that were prevalent at the time in Turkey, could receive one-eighth reduction and the amendments also referred to honour killings in order to prevent them; they were also criticized for being left for judicial interpretation before (Kogacioglu 2004). In 2005, the Turkish Penal Code was revisited due to pressures by feminists and VAW was accepted to be a "crime against person".

Despite all the reforms and progress made in towards EU membership, the party program and rhetoric exposes a different landscape. In 2009, Opuz v. Turkey has become a benchmark case when the European Court of Human Rights announced its decision in finding Turkey accountable and guilty (Abdel-Monem 2009). This decision exposed the Turkish government in failing to take adequate steps to protect women from violence. In 2011, the political landscape shifted. Before, the AKP that was attempting to survive politically via EU candidacy changed its direction towards a more conservative traditional rhetoric. Gunes & Ezikoglu (2022) note that "they pursued more comfortable and distant concern for survival and legitimacy" in growing anti-EU skepticism.

After 2011, one can observe the strengthening of the traiditonal family discourse and

deploying of moral or religious intentions. One example is the statement made by President Erdoğan in 2011 “women and men are not equal by nature”. He follows this statement by an emphasis on “fitrat” which is a word that refers to “natural creation” of manhood, a tenet of Islam that attributes natural distinction to gender categories (Kandiyoti 2011). Again in 2011, “General directorate of women’s status and problems” that was established in 1991, was abolished and replaced with the Ministry of Family and Social Policies (Kandiyoti 2016). Istanbul Convention, which is a legally binding agreement that sets standards for protecting women from all types of violence, was also signed in 2011 (Aksoy 2021). Opuz v Turkey is said to have accelerating effect on the ratification of Istanbul Convention (Sahin 2022).

As it can be observed, one cannot detect a clear progression or policy direction in the AKP period as these actions happen after one another. From 2011 to the period that leads to dismissal of the Istanbul Convention in July 1, 2021, the decade can be marked as an exclusion of gender politics from the political sphere. KADEM (Association for Women and Democracy) was established in 2013 as a government-supported NGO for VAW matters. Gunes Ayata & Dogangun (2017) underline this period as a religio-conservative gender climate where gender inequalities and discrimination have become naturalized. In terms of femicides, feminist groups and NGO’s took over the institutional space that was left unattended, and started drawing public attention to femicides through the media outlets. By announcing every femicide and their court hearings, women in Turkey have established that “you will never walk alone”. Therefore, the decision to withdraw from the Istanbul Convention did not come as a shock, as the government was long criticized for not implementing it adequately.

3.1 Working of the legal system in Turkey

Turkish Penal Code ("Türk Ceza Kanunu" in Turkish or "TCK") ascribes lower and upper limits for the prescribed crimes. In law, this is referred to as a progressive penalty system. In practice, when a case of femicide is brought to court, the legal proceedings start in the local criminal court. These can also be called the Criminal Court of First Instance and they hold jurisdiction based on geographical location (Muftuler-Bac & Muftuler 2021). The local court is responsible for the whole proceedings and investigations alongside a prosecutor and defendant's lawyers. In these Criminal Courts, only serious or violent crimes are tried with long-period incarceration, therefore, they are specialized in such crimes. Once a ruling is made by the local Criminal Court, the case proceeds to the Court of Cassation. The Court of Cassation is the final authority in the criminal justice system, it regulates the local court's decision and has the final say. When a case moves to them, they could either uphold or overturn the judgment. In cases of overturning, the case is sent back to the same local court in order to be reconsidered and reheld. If the Court of Cassation sends back the case, they must state their reasons for not finding the verdict adequate. As the ultimate authority in criminal cases, its decisions carry significance not only for the individual cases, but also in shaping legal interpretations that serve as precedents (Muftuler-Bac & Muftuler 2021).

With regards to changing political landscape, the legal system also underwent dramatic transformation such as the replacement of prosecutors and judges in 2011. (Ertekin 2011; Baytok 2012). As a result, the law became increasingly became a contestable arena during the 2010s. We refer to a discretion of the judge in terms of "discretionary mitigation" law in the following chapters. However, legal scholars note that the discretionary power of the judge and its control are not arbitrary (Kacar 2022). The Court of Cassation reviews whether the discretionary power

is exercised in accordance with the law, and the court of appeal reviews whether it is exercised in accordance with both the material facts and the law. Thus, the Court of Cassation states that the reasons for discretionary reduction must be reasonable, in accordance with the rules of law. In case studies, as the standard legal operation will also be illustrated, there are cases where the checks and balances between local courts and Court of Cassation work and there are cases where it does not.

3.2 Its Critique

Turkish criminal law, particularly in the adjudication of gender-based violence, remains open to interpretation. As it will be addressed empirically, the legal articles are left open-ended for the discretion of the court. In this creation of space and significant variation in how justice is applied, the flexibility may result in a differing legal outcomes fed by normative processes. To be clearer, in practice, this flexibility may enable the influence of powerful social groups or moral norms in shaping legal outcomes. Smart (1989) highlighted the "professional language of law" which is a constructed discourse in appearance of neutrality and expertise. Professional language of legality exposes as well as safeguards the possible bias in courtrooms.

On top of being open to interpretation, another important critique is obscuring of the gendered and moral assumptions in the legal realm. For instance, good conduct abatement clause was amended in 2022 with an added sentence stating that "no reduction in the penalty to be given by taking into account the dress code". The problem in this sentence is that: There has never been a case where the official reason for a reduction was stated as according to dress code of the defendant. However, although it would not be mentioned in legal documents, such reduction could occur as dressed as another reason. It can be widely understood to be a 'coded'

factor in assessing remorse, or good behavior. This instance proves that even if the criminal law was closed to interpretation, and everything was crudely described, there may still be room for adjustment. This proves a significant suggestive point that the legal institutions have their own logic in granting the reduction.

At the same time, women's capacity to collectively organize against gendered legal injustices are limited. Under the AKP government, growing mistrust in the legal system and sustained political pressure has diminished the efforts and effectiveness of women who need protection by the system. The fundamental example for this is the Opuz v Turkey (2009) case where European Court of Human Rights have decided to hold Turkey for not taking effective action to protect Opuz and her mother against the perpetrator. Although this decision is important and although it marks state's responsibility and failure in taking the necessary measures, Opuz had to repeatedly defend herself in court while the Turkish state argued that Opuz had not exhausted domestic remedies and withdrew their complaints repeatedly (Abdel-Monem 2009). The system is structurally flawed if a woman withdraws complaints and does not trust the protection that may come from it. In the Opuz case, it is also apparent that the local authorities released the offender in many occassions even though the alarming markers were present.

3.3 Sources, methodology and positionality

One of the central methodological challenges in conducting research on gender-based violence in Turkey is the lack of available and reliable legal data as well as public reports on femicide numbers. Despite the significance of the problem, the Turkish Ministry of Justice or the Ministry of Family and Social Services do not disclose systematic data on how many women

have been killed due to femicide or what the punishment is. These news are occassionally served through media channels. My initial idea of this project was to research if one can observe an increase of discretionary mitigation in criminal punishment cases of femicide when the media attention is shifted. However, such idea would be credibly difficult to observe and test, especially with the lack of sources of data from the official state institutions. One the one hand, the lack of instutional transparency presents a major limitation to conduct an empirical legal investigation. On the other hand, the absence of data may be pointing to the severity of the problem that is attempted to be obscured.

I adopt a critical qualitative methodology with a feminist epistemology. This includes a review of legal texts, media reports on publicized femicide cases, court decisions, as well as semi-structured interviews with feminists who followed court cases and informal exchanges with legal professionals in order to understand the professional language of legal texts. Given the lack of official data on gendered violence and femicide, as well as, the limitation of Turkish public court orders, this method allows for the collection of insight that is otherwise unrecorded in legal documents. Smart (1989) describes a form of knowledge production that operates outside the formal structures of law, such knowledge production may be both grasped within the legal professional language or from a political science lense. My approach allows me to understand the sum of the mix of material from a political perspective.

To examine good conduct abatement or discretionary mitigation in depth, I rely on media coverage and digital monitoring of court proceedings by feminist groups such as the X page "Kadın Davaları"[2]. This exemplary page offers updates on cases which feminist groups closely follow. They, and also other feminist groups, offer families of femicide victims to be present in

[2] https://x.com/kadindavalar

their court proceedings as it is believed that it impacts the court decision. These groups also have an essential role of publicization of judicial femicide cases. They reveal what may be the unofficial reasonings behind the official judicial verdicts and announce it to the public. To navigate the constraint on publicly available general data on the numbers of VAW and femicide, I also refer to "Anıt Sayaç"[3] (The Monument Counter) project which is a digital memorial created by Turkish feminist activists. *Figure 1* refers to the quantity of femicide cases drawn from this project which documents the evidence of increase in femicide. Both platforms serve as important archives that document both the human cost of inaction and feminist solidarity.

The primary unit of analysis in this study is selected court cases in which good conduct abatement was granted, or reversed by the Court of Cassation in order to be granted. Reversal of the Court of Cassation does not directly result in the abidance of local courts. However, the inclusion of these reveals are necessary to deduce how the legal institutions correspond to each other's verdicts and make it work. Case selection was guided by the public visibility, legal framing and documentation that was available to a researcher eye, rather than random sampling. The reason of this method of selection is the forementioned lack of transparency and availability. In such selection, biased sampling may be of concern and I trust that my positionality as a researcher on this topic provides an answer. In addition to textual and media analysis, the research draws from oral histories and informal conversations with lawyers and feminists who have observed or participated in court hearings. While most of these do not constitute structured interviews, they provide critical insight into courtroom dynamics that are otherwise invisible to the public record. These engagements are particularly important given my positionality.

My own positionality as a woman and a feminist researcher with connection to activist

[3] https://anitsayac.com/

networks is an asset for accessing this knowledge and interpreting it. I do not approach the concept of good conduct abatement and Turkish jurisprudence as a legal expert, I approach them as a feminist political scientist. Although my position as a political scientist works in this aspect, this outsider status to the legal expertise made it necessary to engage with the professionals. I needed their help to decode the technocratic language in rulings and in media outlets to how the court system works and how legal discretion operates.

Methodologically, this study adopts a critical qualitative approach rooted in feminist legal theory. It views law not as a neutral arbiter but as a site where power is negotiated, contested, and often preserved. The main goal is to evaluate whether good conduct abatement, as feminist scholars argue, operates as a gendered privilege and how would such operation work. By comparing court rationales with increasing femicide rates, this project also explores whether the steady increase of VAW in Turkey is linked to the judiciary's failure to impose meaningful criminal punishments.

Ultimately, this research seeks not only to uncover how gendered interpretations operate in individual cases in judicial proceedings, but also investigate the structural conditions that enable these interpretations become normalized. Through a combination of activist documentation, media analysis, and feminist legal insights; the study maps a picture of the courtroom not simply as a space of justice, but as a site of contested meaning, where the line between law and ideology is continuously negotiated.

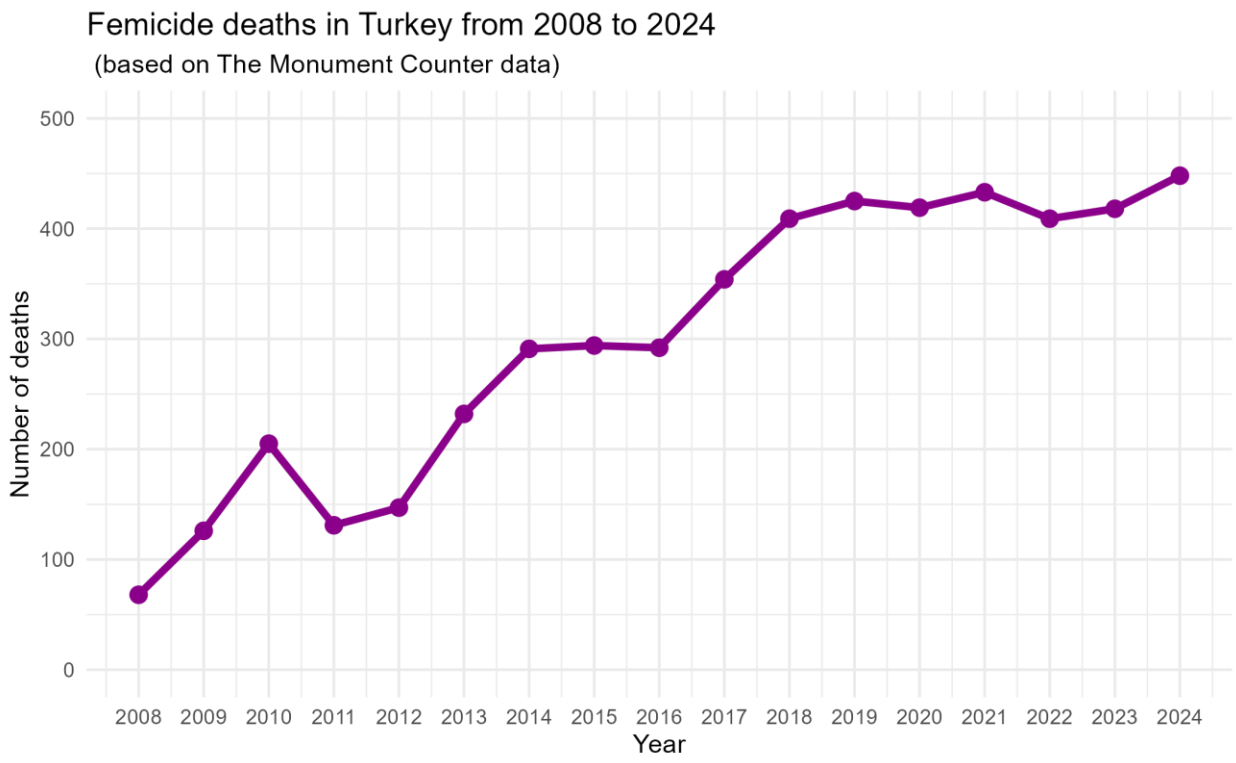

Figure 1: Line graph on femicide data

Chapter 4: Good Conduct Abatement

Good conduct abatement ("iyi hal indirimi" in Turkish and "takdir-i indirim" in Turkish legal terminology) is a legal practice that refers to the reduction of a court-given sentence that can be based on several reasons by the court. In international law, this practice falls under the broader category of mitigation in criminal punishment, as opposed to possible aggravating factors of a punishment described in a country's Penal Code. For example, in Sweden, the Penal Code refers to many mitigatory factors from capacity of judgement to the harm done to the offender (Jacobson & Hugh 2007). In New Zealand, as well as Canada, their legislatures imply a commitment to rehabilitative capacity of an offender. Good conduct abatement refers in this context to the personal factors for mitigation in punishment, that could be in the shape of remorse, cooperation, or rehabilitation. On a spectrum of mitigation-aggravation that happens for the determination of a criminal sentence, I place good conduct abatement practice as any force that pulls towards the mitigation side of the spectrum. Therefore, I use the term in a broader manner rather than the narrow description of how an offender behaves after the action.

This concept is particularly important in the context of Turkey as feminist circles have been pointing out the practice of good conduct abatement for its flexible use. As it will be demonstrated both through legislation and practice, mitigatory factors seem to differ according to discretion of the court.

4.1 In legislation

The amount of reductions and their reasons are defined under the section 62 of 5237 numbered Turkish Criminal Code (2005). As every crime and offender are different from each

other, this law is defined under the larger category of "determination and individualization of the criminal penalties". Article 62 is named "Grounds for Discretionary Mitigation" as I use the term good conduct abatement to refer to discretionary mitigation. The article in the legislation is as follows:

> Article 62, Grounds for Discretionary Mitigation
>
> (1) Where there are grounds for discretionary mitigation, a penalty of life imprisonment shall be imposed where the offence committed requires a penalty of aggravated life imprisonment; or twenty-five years imprisonment where the offence committed requires a penalty of life imprisonment. Otherwise the penalty to be imposed shall be reduced by up to one-sixth.
>
> (2) In the evaluation of discretionary mitigation the following matters shall be taken into account: background, social relations, the behaviour of the offender after the commission of the offence and during the trial period, and the potential effects of the penalty on the future of the offender. The reasons for any discretionary mitigation are to be stated in the judgement.
>
> (European Commission For Democracy Through Law 2016: 23)

As the English version published by the Council of Europe (CoE) Venice Commission also notes, the article was amended and adjusted in 2022. In the official newspaper, the amendment was announced on 27 May 2022 thus making it official. The adjustment was changing of the reduction from "one-fifth" to "one-sixth" in the first clause and clarification changes in the second clause. In order to argue the flexibility of interpretation of this law, one must also consider the previous version. Firstly, the amendments in 2022 propose an improvement specifically for the second clause, and also the English version of CoE was not updated with the important sentence that was added in amendment: "However, the perpetrator's formal attitudes and behaviors aimed at influencing the court in the trial are not taken into account as a reason for discretionary reduction" (T.C. Resmi Gazete 2022). In the Turkish version, this was added as the

second sentence to the second clause. As it was be argued before, this sentence enunciates a great problem in the Turkish legal system. It is nevertheless a step towards acknowledging the problem of biased use of the practice. Secondly, the other amendments made in the first sentence depict an attempt of clarification. Clarification change was made that is the removal of the phrase *gibi hususlar* which means "aspects alike". Therefore removal of the phrase reduces the openhanded interpretation of this specific law. Thirdly and lastly, the first sentence was adjusted from the phrase "their behavior during the process," to "their behavior showing remorse during the process or". This adjustment can be viewed as a specification of behaviors during the process and also as an improvement towards a well-defined legislation. Full version of the Article 62 as it exists in the Turkish Penal Code today can be found in Appendix A. The updated version of the second clause in the article, translated to English by me, is then as follows:

> (2) As a reason for discretionary reduction, the perpetrator's past, social relations, behaviors showing remorse after the act and during the trial process or the possible effects of the punishment on the future of the perpetrator may be taken into consideration. However, the perpetrator's formal attitudes and behaviors aimed at influencing the court in the trial shall not be taken into consideration as a reason for discretionary reduction. Reasons for discretionary reduction shall be indicated in the decision with their justifications.

4.1.1 Distinction between aggravated and non-aggravated life imprisonment

In the light of the conceptualization of good conduct abatement and the case studies, the difference between aggravated life imprisonment and life imprisonment without aggravation must be emphasized. According to 5275 numbered Laws on Execution of Penalties and Security[4], life imprisonment punishment can be given on several occassions ,and for this context

[4] The whole legislature can be read in:
https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=5275&MevzuatTertip=5&MevzuatTur=1

deliberate killing of a person is one of them. In Article 107 of the mentioned law, those who were sentenced to aggravated life if they have served 30 years, and those who were sentenced to non-aggravated life if they have served 24 years, may benefit from conditional release. The difference between sentences differ in terms of the years served, and in cases of non-aggravated life, one can refer to these also as reduced sentences. The classification of "good behavior" is crucial for prisoners serving life sentences, as it directly affects their eligibility for parole. Simply put, if one is convicted of aggravated life sentence, their sentence cannot be as easily reduced as their crime action is deemed as a very serious offense. If one receives life imprisonment without aggravation, their conditions of imprisonment matter as well as possibilities of reduction based on the circumstances described in the good conduct abatement article.

The legal system makes a distinction between deliberate killing of a person and of a first-degree relative. If the criminal act was towards the spouse or a family member, the offender would receive the punishment of aggravated life imprisonment. If the person is not a first-degree relative, the offender may receive life imprisonment without aggravation.

According to the Article 81 in Penal Code, the legal system also makes a distinction in a homicide where it is was planned and thus "qualified" (*nitelikli suç*). If the criminal act does not appear as planned, on purpose, nor with intentions to inflict atrocious pain, the offender may be sentenced to non-aggravated life imprisonment (Baytok 2022). For the legislatives, what makes a homicide "qualified" is described in Article 81. It is important to note this distinction between planned action and spontaneous action, the legal system appropriates a heavier punishment for those actions that were planned.

4.1.2 Unjust provocation

Unjust provocation is specified under Article 29 of the same 5237 Turkish Penal Code. It is necessary to also provide the article to underline what the legislature means for unjust provocation:

> Any person who commits an offence in a state of anger or severe distress caused by an unjust act shall be sentenced to a penalty of imprisonment for a term of eighteen to twenty four years where the offence committed requires a penalty of aggravated life imprisonment and to a penalty of imprisonment for a term of twelve to eighteen years where the offence committed requires a penalty of life imprisonment. Otherwise the penalty to be imposed shall be reduced by one-quarter to three-quarters.
>
> (European Commission For Democracy Through Law 2016: 10)

As given in the article, "unjust provocation" defense may be interpreted as a way reduce the given life punishment by arguing to be under severe distress. The clause produces a punishment even lower when added with a good conduct during and after trial proceedings. For court cases of femicide, this type of defense is distinguishable for the fact that the victim is no longer with us as a witness of the incident. Therefore, the defense would have to search all possible kinds of information and evidence.

4.2 Theoretical discussion

Discretionary mitigation in criminal law should be understood as a first and foremost a legal practice. It does not only exist in Turkey nor will it cease to exist. The concept appears as a necessity of the reformative law system that attributes a benefit of the doubt, the potential to change, to people who are incarcerated. Besides mitigating factors, there also may be

aggravating factors to the punishment which are beyond the scope of this research. Still, the distinction between aggravated life imprisonment and non-aggravated marks an importance. The theoretical discussion must centeralize on the individual who is being punished for their committed crimes.

An important element of the contemporary justice system consists of the idea that an individual can be bettered, rehabilitated, and improved. Good conduct abatement as a modern legal right serves the purpose of giving the individual the benefit of the doubt and investing that belief in bettering oneself. It is a tool for tailoring punishment to the individual based on their circumstances. Laws are written general and abstract, in application they require individualization. I understand the primary question here is that why are some criminal punishment mitigated and some not. But I also understand the prior question of criminal justice is a structural one: Why has the act been committed? In circumstances such as mental illness, one cannot analyze any deep meaning of the crime, it appears as random. However, in circumstances such as 'genuine' remorse, future of the perpetrator, emotional distress or social relations; what is just? It does not appear as outright as it is in the case of a mental illness. It is left to the discretion of the court and the justice system at large, to interpret and act accordingly. Therefore, my main line of argument does not construct itself on this article to be abolished. I mean to look the legal structure in depth which could possibly expose political or patriarchal reasonings behind the interpretations of the court. Legal institutions are not unshakeable, objective, justice providers; they are part of the bigger state institutional network that attempt to serve to citizens. The discretion of the court is problematical if they understand and support "jealousy" as a reason to kill someone. It is problematical if the court tolerates the offender in an outright play of remorse. Lastly, it is problematic when the court reasons through a patriarchal

logic that positions men above women, thereby framing their actions as justifiable. In Umit Atilgan's study (2015: 520) that conducts interviews with judges, one of the judges states: "I have always observed that many judges do not seek to discover the truth, they rather 'seek to make irreversible decisions.' I have even seen some colleagues who first shaped the case in their minds before listening to the witnesses, and asked the questions accordingly". This statement speaks loud and will be more understandable through empirical cases. By irreversibility, the statement signals the higher legal authority of Court of Casssation that can reverse the verdict.

Similarly, reasoning what is meant by "provocation" constructs an interpretative area where moral order can be at play. As the next subchapter will empirically demonstrate, "provocation" as a reasoning is common in the courtcases within the Turkish context. Provocation, as a legal concept, also works in favor and is thus flexible to interpretation in particular cases of good conduct abatement. I define provocation as one of the subcategories under good conduct abatement. Sentences are discretionally reduced if the court is convinced that the offender was provocated, hence it appears as a subcategory. It is frequently used as a legal defense and functions as a key mechanism for upholding patriarchal dominance (Muftuler-Bac & Muftuler 2021). While the law requires that the victim's actions must have triggered intense emotional disturbance in the perpetrator, these actions are not consistently or clearly defined. As a result, judicial interpretations vary significantly. Feminists refer to discount of provocation as "the mitigation of masculinity" (Karakus, 2011).

Morality comes forward questionably in these cases. Before, the previous Turkish Penal Code Article 438 had declared a difference in the treatment of violence between a woman who is a sex worker and a modest (*iffetli*) woman (Yenicag, 2019). As it was referred in the previous part, latest Turkish Penal Code defines provocation as "disturbed state of mind which includes

intense emotions such as anger, distress caused by an initial act of the victim which does not fit into general societal traditions, moral conduct, and legal rules" (Turkish Penal Code 2005; Muftuler-Bac & Muftuler 2021: 164; Demren Donmez 2013). In terms of what is just and not, this clause attempts to protect the criminal acts that were committed in defense of oneself. If an individual was wronged and it was unjust, this clause understands the possibility of the individual committing a violent crime. However, the definition of provocation goes beyond such protection and steps into the question of what is moral and what is not. Rather than what is just and unjust, the question has transformed into a question of morality. I argue that legal institutions are not accountable with questions of morality. It should not be a question of the justice system what the woman was occupied with, if she was cheating, if she was texting anyone, if she was a sex worker and many more. In the Turkish context, in many cases, these are included in the justice system through the crimes committed by men to women who argue they are provocated based on moral reasoning.

Lastly, a theoretical discussion on law and punishment needs to address what fuels violence in the first place. Modern criminal law is not only about punishment or retribution, it is also about general prevention. Particularly, is it possible to consider that there could be an increase in rates of violence against women fuelled by publicized cases of impunity? Does the existing legal order motivate a possible perpetrator into committing the violent crime against their wife, girlfriend or sister? The answer to these cannot be straightforward nor easy. However, one must still pay attention to the societal reflection of judicial cases, specifically how they echo on the public realm. The most publicized and pioneer cases of femicide in the 2000s that brought about outrage by the general public, were Münevver Karabulut (2009)[5] and Özgecan Aslan

[5] For more information: https://bianet.org/haber/munevver-karabulut-summary-of-a-murder-case-117162

(2015)[6]. Both of these cases resulted in a public outcry due to the fact that they were both subjected to extreme violence, their cases brought about deliberation on VAW and femicide. However, still, the discourse on media was no directed at systemic issues of gender-based violence, rather it revolved around subtle victimblaming and stereotypes (Gurses 2016). The problems concerning media display on VAW are beyond the scope of this research, one can still argue that these high-profile cases resulted in VAW and femicide to be more visible in the public realm.

4.3 In practice: Order of the court

An effective way to examine how good conduct abatement is interpreted and applied in Turkish jurisprudence is through case studies and real courtroom narratives. The purpose of selecting specific cases is to situate this legal practice within the broader cultural and institutional landscape, highlighting how judicial reasoning may be shaped not only by legal doctrine but also by prevailing social and moral values. As a result, the boundary between legal rules and societal norms often becomes ambiguous when "good conduct" is invoked as a mitigating factor. Each case presents its own unique context and legal trajectory. In assembling this selection, I intentionally chose each case from a different city in Turkey to account for potential regional variation as each city has its own courthouse and its own dynamic. Although all courts are bound by the same laws, their interpretations may diverge. The selected cases are presented in chronological order, each introduced through a brief account of the incident and subsequent legal proceedings primarily based on news media.

[6] For more information: https://www.bbc.com/news/world-middle-east-31538538

4.3.1 Case Studies

a. Ayşe Yılbaş

In February 2008, Ayşe Yılbaş was killed by his retired soldier husband whom she was trying to get divorced from (Karakus 2025). She was an intern doctor in one of the most prominent hospitals in Istanbul. He kept making threats beforehand, and one day, he goes to her workplace and shoots her 12 times. One of the important factors rely on the arguments of the offender's lawyers in these hearings, as feminists followed this case closely and reported. Feminists report that "He was unconscious", "He was schizophrenic", "He had no criminal capacity", "He was in love, he was devastated", and many more were the justifications put forward by his lawyers. The local court process ended in 2009, punishing him with two-times aggravated life imprisonment – one-time on "qualified" homicide as it was deemed as a planned action, and one-time on killing of a first degree relative as they were married.

The local court's decision was overturned by the Court of Cassation. The reason of overturn was that "it was not clear whether he planned it, whether he carried out his plan patiently and persistently, and when he made the decision to kill". There is a difference between "spontaneous" and "planned" action in criminal punishment as it was explained in the legislature chapter, planned actions are more heavily punished. However, in this case, it seems that the Court of Cassation observed that the incident as a more spontaneous matter whereas there were other factors; he made threats before, he is ex-military therefore he owns and knows how to use a gun, he goes to her workplace, and he does it in public for everyone to see.

The local court stood by their first verdict on aggravated life imprisonment. The only thing they did was to remove the one-time aggravated life sentence given for the planned nature of the action, therefore the verdict of aggravated life sentence based on murder of a married partner stayed. The Court of Cassation then approved it. This case pinpoints the importance of

feminist intervention in femicide cases. It was not the first case where feminists were present in courthouse, however, Ayşe Yılbaş was already receiving help from 2 feminist lawyers to get a divorce before she was murdered. This drew more attention to the case by feminist groups as she was one of their own.

b. Hatice Kaçmaz

Hatice Kaçmaz was an artist in the national television channel TRT (TKDF 2022; Baytok 2022). She was murdered in Ankara in 2014, and earlier that day she had rejected the marriage proposal of a man. The same man, convinced her to talk once more and took her to a park, stabbed her 15 times with a knife. In the court process, this man defended that "he was carrying a big knife because he was on the way to sacrifice an animal for Eid" in order to prevent from prosecuted as a *qualified* homicide. It was conflicting that he had only 7 Turkish Liras in his pocket, as animals in Eid cost a considerable amount of money. He had a prior criminal record as he had murdered his sibling and got released in 13 years.

The local court gave him life prisonment sentence without aggravation. The Court of Cassation approved this verdict, and in the news outlets, it became publicized as the reason states "the murder might not have happened if she had accepted the proposal" (TKDF 2022). Even though they were not first-degree relatives, the murder's details describe a planned action. As the reason given by both court orders suggests that life sentence verdict here without aggravation suggests the use of good conduct abatement as he was in "emotional upheavel", the killer's sentimentality caused by "excessive love in the degree of passion". Therefore, the courts saw this incident as a spontaneous action even though it was a femicide and even though the offender had a prior criminal record. Due to the lack of aggravation, he will get released without serving the full life sentence. TKDF reports the lack of aggravation reduces his sentence by 6 years,

therefore he would only serve 22 years in prison.

c. Canan Çeviren

Canan Çeviren was murdered in Manisa 2020 (DHA 2024; Sumer 2025). She was a divorced woman with 2 kids, the offender is said to have had an ongoing affair with her, while he is a married man with a child. In the incident, they were at her workplace and they started arguing. He shoots her twice with a gun. The local court decides on life imprisonment. It was not a "planned" murder, therefore, there is no aggravation.

The Court of Cassation overturned the local court's rule stating that good conduct abatement should have been implemented in this case. The reason stated that the accused did not leave crime scene, he informed law enforcement and paramedics from his phone. They also underlined that he did not have a criminal record before. Overall their overturn underlines the offender's "good intentions". The lawyer of the victim stated that "this attitude of the Court of Cassation encourages the defendant who killed a woman without blinking an eye and many others like him". In January 2025, 5 years later after the incident, after the local court giving the same verdict and after 2 overturns by the Court of Cassation; the higher Court finally approved and upheld the verdict without any reduction in his life imprisonment sentence.

d. Hülya Güllüce

Hülya Güllüce was murdered in Adana in 2020 (IHA 2025). The case of Hülya Güllüce is a defiant one in terms of the case studies. Usually, we observe that the local court gives a heavier punishment while the Court of Cassation overturns the given verdict with the request of good conduct abatement. However, in Hülya Güllüce, this occurs reversely. Hülya Güllüce was a woman who was living with a man that she was not married with, they had a child who was 17 years old, and they lived all together as 3 people. This man is also married to another woman. In

the incident, she was shot in their house by the offender, and their child finds the man.

The local court gives the verdict of 18 years of imprisonment with the justification of unjust provocation as:

> The defendant and the deceased were not officially married, the fact that the deceased continued to live with the defendant until the day of the incident knowing that the defendant was officially married to someone else, the fact that they had a child from their unofficial marriage, and the fact that the defendant undertook the care of the deceased, the fact that the deceased committed this act under the unjust provocation caused by the deceased having a relationship with someone.

This local court justification putting all the responsibility of Hülya Güllüce and framing her as a cheater even though she was not in a legal marriage with anyone, meanwhile the offender was, created an upheavel.

The Court of Cassation overturned this rule and sent back to the local court. They stated that "the deceased expressed her request for official marriage repeatedly, it was found that they had been sleeping in separate rooms and verified by their child, the deceased established an emotional intimacy with another person and wanted to get married, and the offender could not handle this jealousy". The local court process happened again and they gave the verdict of life imprisonment this time.

e. Şule Akdeniz

Şule Akdeniz was murdered in 2020 in Diyarbakır by her husband (Sinayic 2025). The perpetrator was sentenced to aggravated life imprisonment without any reduction. The Court of Cassation overturned this verdict, proposing that the perpetrator should be given reduction for good behavior and provocation. The provocation in this case was that Şule was cursing to him in

an argument and spat on his face before the incident. The higher court also argued that her "immoral lifestyle" should be questioned, given the evidence that she sat with another man in a bar earlier that day.

As they were married, the punishment becomes heavier as it is "crime against a spouse". The local court stood by their first verdict of aggravated life imprisonment. The proceedings are still ungoing and it is unclear whether the Court of Cassation will overturn the decision once again, or approve. Still, it is important that the local court stood by their initial verdict and did not give in to institutional ease of implementing the higher court's decision.

f. Özlem Eryakşi

Özlem Eryakşi was murdered in 2020 in Izmir (DHA 2025). They were not married but they were soon to be wed. She was shot by an unregistered gun inside their house with the offender. The local court utilized good conduct abatement based on the fact that the incident happened as they were arguing, and gave the verdict as 24 years in prison. Both sides objected, and it moved to Court of Appeals under Cassation. In the proceedings, the offender's call to the emergency services was listened by the court. In the recording, he states "come and get her, I shot her, come on, come take me too". The prosecutor also clarified that it was impossible for someone to shoot themselves in such angle in accident. Therefore, the Court of Cassation unanimously decided to sentence him to aggravated life imprisonment for intentional murder against a woman. It was aggravated life sentence even though they were not spouses yet, aggravation came as the additional punishment for owning an unregistered gun.

g. Nazlı Meral

Nazlı Meral was murdered in 2022 in Bursa (DHA 2023). Her case is demonstrative for the mentally unfit argument of the defense. She was suddenly stabbed to death by her husband in

their living room while there was not an incident to suggest any argument or fight. He claimed to have psychological problems. He was sentenced to aggravated life imprisonment for intentional murder against spouse after it was proven that he was, in fact, mentally fit. There was no discretionary mitigation for his case. I included in this case to refer the mentally unfit defense of an offender. The health officials after inspection declared that the offender had the ability to comprehend the legal meaning and consequences of his actions, therefore, he was deemed guilty.

h. Damla Dakım

Damla Dakım was murdered in Konya, in 2023, by the man whom she was bound with through "religious marriage" (DHA 2025). In Turkish legislation, although religious marriage is not accepted as official marriage, Constitutional Court's decision in 2015 marks it as permissible for religious marriage to happen without the official marriage (Ozbudak 2015). Still, in these marriages, rights of legacy and family become complicated without a formal marriage.

There were 47 stab wounds on the woman, the offender alleged that she was cheating. The accused also had just been released on parole from prison where he had been convicted for 8 years for "attempted intentional murder". He has a prior criminal record, there is no official marriage obligation, and there is also the fact that she filed complaint about him before because of VAW.

The local court gave the verdict aggravated life imprisonment. The Court of Cassation overturned the local court's rule; they stated that the couple had obligations of loyalty towards each other, and therefore the offender should be given a minimum "unjust provocation" discount. How there is an "obligation of loyalty" in an unofficial religious marriage, remains as the unanswered question. As this is the last case example and the most recent one, the proceedings are still ongoing and the case is now returned back to the local court.

4.4. Discussion in light of the case studies

I ground this research on four main arguments. First, there occurs an indication by the legal institutions on how women (in the position of the victims in femicide cases) should have behaved. For example, it proves as a problem if a court contemplates on why a single woman got together with a married man, while the question should have been posed vice versa – as in the case of Hülay Güllüce. In the study conducted by Muftuler-Bac & Muftuler (2021: 167), one of their key findings is that "different levels of Courts tend to take diverging positions, creating a level of confusion as to how the law is applied in femicide". Some verdicts indicate women as responsible figures for what happens to them for their alleged "improper" behavior as in the case of Hatice Kaçmaz. In this study, first of my main attempts is to draw attention to the responsibility put on the victims who have already passed. Specifically, the prevalent use of "unjust provocation" is problematic as the victims are not there to defend themselves.

Second, there occurs a tension between the local court and the Court of Cassation in terms of verdicts and reversibility. Case studies illustrate the diligence against the possibility of reversal from the higher legal authority of the Court of Cassation. For this reason, local courts fall into the position of investigating in all directions. If they do not, the Court of Cassation may counter their verdict with arguments based on the underinvestigated aspects. This argument is supported by an interview I have conducted with a person in We Will Stop Femicides Platform on a case she followed. She states:

> "As I explained for (…) case, the man is married, no one questions the fact that he is married, he is the one who is not loyal. No one says that when he commits this crime, that it should be more aggravated. So they do not investigate that, (instead) they tried to clean up the voice recordings

> that were not clear. You have no idea how many times they tried to clear the voice recordings (…) There is a recording where the couple is arguing, you cannot hear what they say. He argues that 'she curses at him and insults his manhood'. Because of this argument the court had to try cleaning the audio multiple times to see if there was such a thing. It was just really inaudible. Even if the judge does not think so, they know that the people in the higher Court think so they prepare a report about it, even if they do not think that "there could be a justifiable discount". The judges feel obliged to do this because otherwise the Court of Cassation overturns it.". (Appendix B)

This incident happens mainly to prevent the Court of Cassation from overturning the decision and thus blame the local court for not investigating enough. However, as one asks themselves, is "insult to one's manhood" a reason in legal proceedings to murder someone or reduce their sentence? It is unclear what the legal authorities think as they are obliged to investigate aspect of a case. Still, as Umit Atilgan (2015) also exposes in the study with the judges, they are in awareness that they are bound by the Court of Appeals as they have the last word. The Court of Cassation may overrule and reverse the local court's decisions multiple times; therefore, if a local court is certain and confident on a decision, after carrying out more hearings, they may stand by their initial decision. However as my interviewee suggests and as case studies illustrate, there exists an urge to comply with the Court of Cassation as it is difficult to stand against them within the hierarchical institutional framework.

Third, there occurs a discrepancy in court rulings depending on their interpretation of the law. The open-ended and flexible space given in the clauses seem to work in a unmethodological way. For example, in the legislature, good conduct abatement clause states that there can be attention paid to "the perpetrator's past" whereas in the case studies of Hatice Kaçmaz and Damla Dakım, there is a clear prior criminal record. Instead of paying attention to the prior

criminal record, a court may then pay attention to other factors that may be mitigating instead of aggravating for the offender. Each crime and each punishment is unique, however, the circumstances in which they have occurred must be explored in an objective manner. If left to a high degree of individual discretion of a council of judges, criminal punishment operated in a different separate manner than written in the legislation.

Fourth, in addition to legal aspect of femicide, there proves to be a necessity for political attention and action regarding gender-based violence. When asked "what motivates a man to kill a woman?", the answer cannot be as simple as provocation or by the tension of an argument. Homicide is a heavy crime. Since these cases are publicized mainly through news outlets and since international agreements on violence against women are not implemented, there may be a growing sense of impunity that can be interpreted in terms of femicide. If the public witnesses such impunity and sentence reduction exist even in cases as heavy as homicide, it would be natural to suggest there can be an increasing in the trend of incidents. Similarly, if an offender experiences criminal punishment, and views that carrying out the crime is outweights the punishment, they may think they can get away with it easily. Such in the case of Damla Dakım, an offender who was released on parole may commit a crime again from the minute they walk out of the facility. In these cases, government attention and policy actions are necessary to disincentivize VAW and femicide.

Chapter 5: Conclusion

This thesis set out to examine the practice of good conduct abatement (*iyi hal indirimi*) particularly in femicide cases in the Turkish context, as a window to how the justice system contributes to, rather than prevents, gender-based violence. Through an interdisciplinary feminist legal framework, the study demonstrated that legal mechanisms under the labels of neutrality and objectivity, are in fact shaped by gendered assumptions as well as political context. Good conduct abatement, when interpreted through this lens, reveals the discretionary and often inconsistent nature of judicial reasoning especially when the perpetrators are men and the victims are women.

Drawing from feminist legal theory and critical legal studies, this research has illustrated that law is not a purely neutral domain. It is a social institution, produced and maintained through historically embedded power relations. The claim to objectivity, neutrality, and universality in legal reasoning often mask the social norms embedded in courtrooms and the legislature. As Schneider (1986) underlined, legal subjecthood is achieved through political movements and it is not a given in itself. In the Turkish context, by illustrating the political history as well as actions to combat against VAW, this thesis emphasizes the urgent need for political action and implementation of policies concerning women. Particularly, the fact that VAW is on an increasing trend and political institutions being increasingly dismissive to such trend signals a fundamental problem.

The selected case studies analyzed in Chapter 4 illustrate the complex relationship of law and gender with clarity. There are instances where offenders receive a sentence reduction based on subjective evaluation of the incident. Namely, loyalty or disloyalty in femicide cases have nothing to do with the incident. A courtroom must not have to prove whether or not a woman

cheated, and an offender should not be able to use this as a defense. On such grounds where sentence reduction occurs, first of my main four arguments is proven as the responsibility on how to act is put on the victim's shoulders. Such reasoning often shifts blame onto the victim and allows the court to frame femicide as a crime committed under emotional duress rather than as a manifestation of systemic gendered violence. The consistent invocation of good conduct and provocation as mitigating factors highlights how the private moral codes of judges can shape public legal outcomes. In the morally charged or subjective defenses, discretionary mitigation on a criminal punishment could only work to motivate possibilities of future homicides.

Further complicating the issue is the tension between local courts and the Court of Cassation. There are cases where local courts issue a verdict only to have them overturned by the higher authority. This way of legal operation may work as a system of checks and balances. However, through illustration of case studies on good conduct abatement, this operation works more in the way of asking each other "Why have you not used discretionary mitigation?". Legal systems that need to be informed of the whole case in order to work sufficiently, in the case studies confront each other for not investigating in depth and thus impose their own interpretations of the context of the crime.

This thesis also argued that legal subjecthood, as currently constructed, does not treat men and women equally. Legal language and categories assume a universal legal subject that is implicitly male, and the courts' treatment of female victims and male offenders reinforces this assumption. The legal system continues to privilege male narratives of emotional distress, pride, and provocation, while failing to meaningfully consider the social and structural contexts in which women are subjected to violence.

Methodologically, this study contributed to feminist legal scholarship by combining court

decision analysis, media monitoring, and oral histories gathered through informal interviews with feminist activists and legal professionals. In the absence of reliable official data, documentations from feminist organizations—such as @kadindavalar and Anıt Sayaç—proved to be crucial sources that both preserve public memory and contest the state's inaction on gender-based violence.

Ultimately, the findings of this thesis suggest that good conduct abatement in Turkey does not operate as a neutral legal practice. Instead, it functions as a site of gendered discretion, reflecting broader social norms that condone or excuse male violence. While the law may formally recognize equality, its implementation does not. The gap between legal principle and legal practice is where patriarchal values persist and thrive.

This research does not advocate for the abolition of discretionary mitigation altogether. Rather, it calls for a critical re-evaluation of how such discretion is applied and who it serves. As long as legal interpretations are allowed to draw on subjective, moralistic, and gendered reasoning, justice will continue to be unequally distributed. Addressing this requires not only legal reform but a deep structural reckoning with how law conceptualizes violence, culpability, and the value of women's lives.

In the face of increasing femicide, public mistrust in the state institutions, and the withdrawal from a key international agreement that is the Istanbul Convention, this thesis joins feminist calls for real justice, not male justice. Law that exists to protect all citizens in times of violence, must pay an exclusive attention to cases of gender-based violence and utilize the necessary tools to protect more women from becoming victims in the future.

Appendix A: 5237 numbered Turkish Penal Code, Article 62

Takdiri indirim nedenleri, Madde 62

(1) Fail yararına cezayı hafifletecek takdiri nedenlerin varlığı halinde, ağırlaştırılmış müebbet hapis cezası yerine, müebbet hapis; müebbet hapis cezası yerine, yirmi beş yıl hapis cezası verilir. Diğer cezaların altıda birine kadarı indirilir.

(2) Takdiri indirim nedeni olarak, failin geçmişi, sosyal ilişkileri, fiilden sonraki ve yargılama sürecindeki pişmanlığını gösteren davranışları veya cezanın failin geleceği üzerindeki olası etkileri göz önünde bulundurulabilir. Ancak failin duruşmadaki mahkemeyi etkilemeye yönelik şeklî tutum ve davranışları, takdiri indirim nedeni olarak dikkate alınmaz. Takdiri indirim nedenleri kararda gerekçeleriyle gösterilir.

Appendix B: Original Quotes in Turkish

Interviewee: “(…) davasında anlattığım gibi, adam evli, adamın evli olmasını kimse sorgulamıyor, bir sadakatsizliği var yani. Bu suçu işlediğinde daha bir ağırlaşması gerekiyor demiyor. Yani onu araştırmıyor, (onun yerine) kadının hakikatten anlaşılmayan ses kayıtlarını temizlemeye çalıştılar ya. Hani bir kayıt var 1 dakikalık, 1.5 dakikalık, kameralar sessizde tabii, dışarıdaki seslerden duyulmuyor ne dedikleri yani. Orada bile “orada bana küfrediyor, erkekliğime laf ediyor” gibi şeyler söyledi. Bunu bile kayıtları temizlettiler, öyle bir şey var mı yok mu diye. Hakim öyle düşünmese bile, yargıtaydakilerin öyle düşündüğünü biliyor – “haksız tahrik indirimi verilecek bir durum yoktur” diye onu kayda alıyor, onunla ilgili bir rapor hazırlıyor öyle düşünen bir hakim olmasa bile. Kararı veren muhakkak bunu yapmak zorunda hissediyor kendini çünkü öbür türlü yargıtay bozuyor.”

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